



Attorney Docket No.: 028987.49843US

PATENT

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#14/Appeal  
Brief  
11-13-03  
[Signature]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: HANS UWE BAUMANN ET AL.

Serial No.: 09/891,271

Group Art Unit: 3682

Filed: JUNE 27, 2001

Examiner: Van Pelt, Bradley J.

Title: RECEIVING DEVICE FOR THE PEDALS OF A MOTOR  
VEHICLE

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APPEAL BRIEF

Mail Stop: Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

On June 5, 2003, Appellants appealed to the Board of Patent Appeals from the final rejection of claims 1-3 and 6-11. The following is Appellants Appeal Brief submitted pursuant to 37 C.F.R. 1.192.

REAL PARTY IN INTEREST

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RELATED APPEALS AND INTERFERENCES

There are no interferences known to Appellant or Appellant's legal representative which will directly affect or be directly effected by or have a bearing on the Board's decision in the pending appeal.

### **STATUS OF CLAIMS**

This application current contains claims 1-11 with claims 1-3 and 6-11 being appealed and claims 4-5 remaining objected to but otherwise allowable if rewritten in independent form.

### **STATUS OF AMENDMENTS**

Subsequent to the Final Patent Office Action of February 5, 2003, a Reply was filed on May 5, 2003 which did not involve any amendments of the claims.

### **SUMMARY OF THE INVENTION**

The pedal system receiving device of the present invention is designed as a constructional unit to provide simple installation or removal of a clutch pedal assembly depending on whether a motor vehicle has a manual or automatic transmission. The object of the invention is accomplished by a clutch pedal swivellably held in an insert which forms a pre-assembled construction unit with the clutch pedal. This pre-assembled unit is able to be fastened between projecting legs of the automobile mounting plate on which an accelerator pedal and a brake pedal are installed. The invention also involves a method of making a receiving device for pedals involving the arrangement of an accelerator pedal and a brake pedal on a mounting plate and then providing a pre-assembled constructional unit formed by swivellably arranging a clutch pedal in the insert wherein the construction is such that it is optionally removable from the mounting plate.

## ISSUES

The issue to be decided by the Board of Appeals is whether claims 1-3 and 6-11 are properly rejectable under 35 U.S.C. § 102 as anticipated by the reference to Counts, U.S. Patent No. 3,192,794.

## GROUPING OF THE CLAIMS

Appellants submit the claims 1-3 and 6-11 do not stand or fall together with respect to the rejection under 35 U.S.C. § 102.

## ARGUMENT

Appellants traversal of the rejection of claims 1-3 and 6-11 is based on the existence of features and method limitations within each of claim 1-3 and 6-11 which are not shown or disclosed by the reference to Counts. Additionally, Appellants traversal is based on what is submitted as an erroneous interpretation of the reference to Counts when compared with independent claims 1, 6 and 9 in the final Office Action. Appellants further submit that independent claims 1, 6 and 9 have been misinterpreted with respect to existing limitation having patentable weight.

According to the stated rejection in the final Patent Office Action, Counts shows, in Figure 1, a mounting plate 28 on which an accelerator pedal 110, a brake pedal 78 and a clutch pedal 79 are swivellably disposed. The clutch is held in an insert 82 which forms a pre-assembled construction unit. Also according to the rejection the construction unit is fastened between projecting legs 24 and 26 of the mounting plate and is optionally removable. In response to previously

presented arguments, the final Office Action indicates that when the claims are given "their broadest reasonable interpretation, the Counts reference anticipates the instantly claimed invention, as the pre-assembled constructional unit of Counts is optionally removable". Additionally, the final Office Action indicates that the ease of which something is removable is a relative term and therefore this limitation does not distinguish the claimed invention.

The reference to Counts, U.S. Patent No. 3,192,794 relates to a brake/clutch and accelerator hand control for paraplegics having a control assembly which may be operatively connected to "the control pedals" of a vehicle in order that conventional operation of the vehicle control pedals may be carried out without using the legs of the operator. As can be seen from figure 1, Counts provides a linkage to each of the clutch pedal, the brake pedal and the accelerator pedal so that a hand operation, which involves pulling on the control lever 86 in order to depress the clutch level 14, may be used. A brake control lever 58 is pulled upward when it is desired to apply the brake. When the gears are not being changed, the clutch lever 86 holds the clutch pedal 14 down through the overcenter position so that the driver uses his left hand at all times to steer the vehicle as only the right hand is used for the clutch, gear shift and brake mechanism.

Each of independent claims 1, 6 and 9 contain an indication that there is a pre-assembled constructional unit being formed with the clutch pedal. The reference to Counts is an add-on feature to an automobile but does not add on a clutch pedal as it required by the presently claimed invention. The clutch pedal of Counts is a conventional clutch pedal and the control device of Counts is a

conversion unit which does not include the clutch pedal. In order to meet the claimed limitations, the Office Action recites that the clutch of Counts is swivellably held in an insert 82 which forms a pre-assembled construction unit. Clearly it does not.

The item 82 of Counts is recited as an insert which swivellably holds the clutch. However, the insert and the clutch do not form a pre-assembled constructional unit in Counts. The item 82 is referred to in Counts as a bifurcated clevis 82 and it is attached to the clutch pedal but the clutch pedal is certainly not part of any pre-assembled construction unit. Whether or not it is determined that any facet of Counts can serve as a pre-assembled construction unit, it is certainly clear that it cannot involve the clutch pedal. Equally clear is that the clutch pedal is a part of the pre-assembled constructional unit of each of independent claims 1, 6, and 9.

With respect to the term "optionally removable", the final rejection indicates that the constructional unit is optionally removable. In this matter too, whether something is optionally removable in Counts may be debated but what is clear is that anything which is optionally removable in Counts does not include the clutch pedal. The final rejection and more particularly the "Response to Arguments" section indicates that the claims are given their broadest interpretation so that the Counts reference anticipates the invention as the pre-assembled constructional unit is "optionally removable". Appellants respectfully submit that the broadest reasonable interpretation of any of independent claims 1, 6 and 9 cannot delete the clutch pedal from the constructional unit and no

interpretation of Counts can include the clutch pedal as part of any kind of constructional unit or optionally removable construction unit.

Dependent claims 2-3 further limit independent claim 1 by reciting features of the insert while claims 10-11 further limit the method claim 9 with respect to the insert. Independent claim 1 provides a receiving device for pedals of a motor vehicle whereas independent claim 6 concerns a pedal assembly for a motor vehicle and independent claim 9 concerns a method of making a receiving device for the pedals of the motor vehicle. Therefore the dependent claims are separately patentable from the independent claims and the method of making claim 9 is separately patentable from independent claim 1.

#### **APPENDIX**

An Appendix containing a copy of the claims is attached hereto.

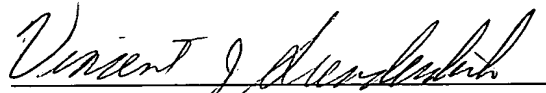
**CONCLUSION**

Therefore, in view of the distinguishing features between the claimed invention and the reference, Appellants respectfully request that the decision on the Examiner in finally rejecting claims 1-3 and 6-11 should be REVERSED.

This Appeal Brief is accompanied by a check in the amount of \$330.00 in payment of the required appeal fee. This amount is believed to be correct, however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 05-1323 (Docket #028987.49843US). A triplicate copy of this Appeal Brief is attached.

November 5, 2003

Respectfully submitted,



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**APPENDIX**

1. Receiving device for pedals of a motor vehicle comprising a mounting plate on which an accelerator pedal, a brake pedal and a clutch pedal are swivellably disposed, wherein the clutch pedal is swivellably held in an insert which forms a preassembled constructional unit with the clutch pedal, which said constructional unit can be fastened between projecting legs of the mounting plate and is constructed to be optionally removable.

2. Receiving device according to Claim 1, wherein the insert can be fastened, by way of an existing continuous bearing bolt for the brake pedal and by way of a fastening screw between the projecting legs of the mounting plate.

3. Receiving device according to Claim 2, wherein the insert has a U-profile-shaped cross-section and the bearing bolt as well as the fastening screw are arranged at a vertical distance with respect to one another.

4. Receiving device according to Claim 2, wherein the bearing bolt for the swivellable receiving of the brake pedal is fixedly connected with a fitted-over sleeve of the bolt, said sleeve forming a support between an inner receiving leg of the projecting legs for the insert and another outer supporting leg on the mounting plate for a head of the bearing bolt.

5. Receiving device according to Claim 3, wherein the bearing bolt for the swivellable receiving of the brake pedal is fixedly connected with a fitted-over sleeve of the bolt, said sleeve forming a support between an inner receiving leg of the projecting legs for the insert and another outer supporting leg on the mounting plate for a head of the bearing bolt.

6. A pedal assembly for a motor vehicle, comprising:  
a mounting plate,  
an accelerator pedal swivellably disposed on the mounting plate,  
a brake pedal swivellably disposed on the mounting plate, and  
a pre-assembled constructional unit fastenable between two projecting legs of the mounting plate and having a clutch pedal swivellably held in an insert,  
wherein the pre-assembled constructional unit is constructed to be optionally removable.

7. A pedal assembly according to Claim 6, wherein the insert can be fastened, by way of an existing continuous bearing bolt for the brake pedal and by way of a fastening screw between the projecting legs of the mounting plate.

8. A pedal assembly according to Claim 7, wherein the insert has a U-profile-shaped cross-section and the bearing bolt as well as the fastening screw are arranged at a vertical distance with respect to one another.

9. A method of making a receiving device for pedals of a motor vehicle, comprising:

swivellably arranging an accelerator pedal and a brake pedal on a mounting plate of the receiving device,

providing a pre-assembled constructional unit, which is formed by swivellably arranging a clutch pedal in an insert, and is constructed to be optionally removable, and

fastening the preassembled constructional unit between projecting legs of the mounting plate.

10. A method according to Claim 9, wherein the insert can be fastened, by way of an existing continuous bearing bolt for the brake pedal and by way of a fastening screw between the projecting legs of the mounting plate.

11. A method according to Claim 10, wherein the insert has a U-profile-shaped cross-section and the bearing bolt as well as the fastening screw are arranged at a vertical distance with respect to one another.